**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE AUTOMOTIVE PARTS ANTITRUST LITIGATION	:	Master File No. 12-md-02311 Honorable Marianne O. Battani
In Re: BODY SEALING PRODUCTS	:	
THIS DOCUMENT RELATES TO:	:	
Dealership Action	:	2:16-cv-03402
End-Payor Action	:	2:16-cv-03403

END-PAYOR PLAINTIFFS AND AUTO DEALER PLAINTIFFS' OPPOSITION TO DEFENDANT GREEN TOKAI CO., LTD'S MOTION TO DISMISS END-PAYOR PLAINTIFFS AND AUTO-DEALER PLAINTIFFS' CLASS ACTION COMPLAINTS

STATEMENT OF THE ISSUES PRESENTED

1. Whether the Court should deny Green Tokai Co., Ltd.'s ("GTC") Motion to Dismiss End-Payor Plaintiffs and Auto Dealer Plaintiffs' (together, "Plaintiffs') Class Action Complaints ("Complaints") where Plaintiffs plausibly allege that: (1) Defendants fixed prices, rigged bids, and allocated the market for Body Sealings; and (2) Plaintiffs indirectly purchased price-fixed Body Sealings from Defendants and their co-conspirators.

2. Whether the Court should also deny GTC's Motion premised on Plaintiffs' purported lack of antitrust standing where the Complaints plausibly allege that Plaintiffs indirectly purchased Body Sealings, and that such purchases followed a physical, traceable chain of distribution from Defendants to Plaintiffs, thereby demonstrating that any costs attributable to Body Sealings may be traced through the relevant chain of distribution.

CONTROLLING OR MOST APPROPRIATE AUTHORITIES FOR THE RELIEF SOUGHT:

Opinion and Order (*Wire Harnesses*), Nos. 2:12-cv-00102, 103, ECF Nos. 99, 119 (June 6, 2013)

Opinion and Order (*Instrument Panel Clusters*), Nos. 2:12-cv-00202, 203, ECF Nos., 82, 86 (July 3, 2014)

Opinion and Order (*Fuel Senders*), Nos. 2:12-cv-00302, 303, ECF Nos. 104, 78 (July 3, 2014)

Opinion and Order (*Heater Control Panels*), Nos. 2:12-cv-00402, 403, ECF No. 130, 93 (July 3, 2014)

Opinion and Order (*Bearings*), Nos. 2:12-cv-00502, 503, ECF Nos. 104, 106 (Sept. 25, 2014)

Opinion and Order (*Occupant Safety Systems*), Nos. 2:12-cv-00602, 603, ECF Nos. 75, 87 (Sept. 25, 2014)

Opinion and Order (*HID Ballasts*), Nos. 2:13-cv-01702, 1703, ECF No. 118, 97 (May 1, 2015) [1]

Opinion and Order (*Windshield Wiper Systems*), Case No. 2:13-cv-00902, 903, ECF No. 74, 87 (Aug. 12, 2015) [2]

---

[1] The Court's HID Ballasts Opinion applied with equal force to the motions to dismiss orders in *Radiators*, No. 2:13-cv-01002, 1003; *Switches*, No. 2:13-cv-01302, 1203; *Motor Generators*, No. 2:13-cv-01502, 1503; *HID Ballasts*, No. 2:13-cv-01702, 1703; *Electronic Power Steering Assemblies*, No. 2:13-cv-01902, 1903; *Fan Motors*, No. 2:13-cv-02102, 2103; *Power Window Motors*, No. 2:13-cv-02302, 2303; and *Windshield Washer Systems*, No. 2:13-cv-02802, 2803.

[2] The Court's Windshield Wiper Systems Opinion applied with equal force to motions to dismiss in *Inverters*, No. 2:13-cv-01802, 1803; *Fuel Injection Systems*, No. 2:13-cv-02202, 2203; *Valve Timing Control Devices*, No. 2:13-cv-02502, 2503; and *Constant Velocity Joint Boots*, No. 2:14-cv-02902, 2903.

TABLE OF CONTENTS

Page(s)

STATEMENT OF THE ISSUES PRESENTED i

CONTROLLING OR MOST APPROPRIATE AUTHORITIES FOR THE RELIEF SOUGHT ii

INTRODUCTION 1

LEGAL STANDARD 3

ARGUMENT 4

I. THE COURT SHOULD DENY GTC'S MOTION BECAUSE PLAINTIFFS PLAUSIBLY ALLEGE THAT THEY INDIRECTLY PURCHASED BODY SEALINGS FROM DEFENDANTS. 4

II. THE COURT SHOULD ALSO DENY DEFENDANTS' MOTION BECAUSE PLAINTIFFS HAVE CONSTITUTIONAL STANDING TO BRING ANTITRUST CLAIMS AGAINST DEFENDANTS. 12

CONCLUSION 18

TABLE OF AUTHORITIES

Page(s)

Cases

In re Apple iPhone Antitrust Litig.,
No. 11-cv-06714, 2013 WL 4425720 (Aug. 15, 2013 N.D. Cal.) 14

Bell Atl. Corp. v. Twombly,
550 U.S. 544 (2007)....................3, 10

City of Oakland v. City of Detroit,
866 F.2d 839 (6th Cir. 1989) 13

Continental Ore Co. v. Union Carbide & Carbon Corp.,
370 U.S. 690 (1962)....................3, 4

Erickson v. Pardus,
551 U.S. 89 (2007)....................10

First Am. Title Co. v. DeVaugh,
480 F.3d 438 (6th Cir. 2007) 3

In re Graphics Processing Units Antitrust Litig.,
253 F.R.D. 478 (N.D. Cal. 2008)....................12

In re High Fructose Corn Syrup Antitrust Litig.,
295 F.3d 651 (7th Cir. 2002) 5, 11

Lujan v. Defenders of Wildlife,
504 U.S. 555 (1992)....................12

Magnesium Oxide Antitrust Litig.,
No. 10-5943, 2011 U.S. Dist. LEXIS 121373 (D.N.J. Oct. 20, 2011) 14

In re Optical Disk Drive Antitrust Litig.,
No. 10-md-2143, 2012 U.S. Dist. LEXIS 55300 (N.D. Cal. Apr. 19, 2012)....................16

In re Packaged Ice Antitrust Litig.,
723 F.Supp.2d 987 (E.D. Mich. 2010)....................7, 11

In re Polypropylene Carpet Antitrust Litig.,
178 F.R.D. 603 (N.D. Ga. 1997)....................11

In re Rail Freight Fuel Surcharge Antitrust Litig.,
587 F.Supp.2d 27 (D.D.C. 2008)....................4

In re Southeastern Milk Antitrust Litig.,
555 F.Supp. 2d 934 (E.D. Tenn. 2008) 4

In re Static Random Access Memory (*SRAM*) *Antitrust Litig.*,
264 F.R.D. 603 (N.D. Cal. 2009) 13

Tellabs, Inc. v. *Makor Issues & Rights, Ltd.*,
551 U.S. 308 (2007) 3

In re TFT-LCD (*Flat Panel*) *Antitrust Litig.*,
No. 07-1827, 2012 U.S. Dist. LEXIS 9449 (N.D. Cal. Jan. 26, 2012) 13

United States ex re. Dingle v. BioPort Corp.,
270 F. Supp.2d 968, 972 (W.D. Mich. 2003) 5

In re Vitamins Antitrust Litig.,
No. 99-197, 2000 U.S. Dist. LEXIS 7397 (D.D.C. May 9, 2000) 11

Weiner v. *Klais & Co.*,
108 F.3d 86 (6th Cir. 1997) 3

Other Authorities

Fed. R. Civ. P. 12(b)(6) 3

Fed. R. Evid. 201(d) 5

INTRODUCTION

End-Payor Plaintiffs ("EPPs") and Auto Dealer Plaintiffs ("ADPs") (together, "Plaintiffs") submit this Opposition to Defendant Green Tokai Co., Ltd's ("GTC") Motion to Dismiss Plaintiffs' Class Action Complaints (together, "Complaints")[1] ("Motion" or "Mot.") (ECF No. 39). GTC's Motion raises arguments identical to those raised in motions to dismiss by other defendants in *In re Automotive Parts Antitrust Litigation* ("*Auto Parts*"), which the Court previously expressly rejected. GTC's Motion should be denied on this basis alone.

This case, *In re Body Sealing Products* ("*In re Body Sealings*"), is the thirty-fourth components parts case in this coordinated litigation (as denoted by the Lead Case Number), and is no different in fact pattern than the thirty-three cases that precede it. *In re Body Sealings* arises out of a broad criminal investigation into illegal price-fixing and bid-rigging in the automotive parts industry. To date, 47 companies and 65 executives have been criminally charged in connection with the Antitrust Division of the United States Department of Justice's ("DOJ") ongoing investigation into rampant price-fixing and bid-rigging in the automotive parts industry. To date, 43 companies have agreed to plead guilty and paid a total of more than $2.9 billion in criminal fines.

On June 15, 2016, the DOJ filed an indictment charging moving Defendant GTC, its corporate parent, Defendant Tokai Kogyo Co., Ltd. ("TK Co.") and Akitada Tazumi (an executive of TK Co.) with participating in a conspiracy "to suppress and eliminate competition in the automotive parts industry." *See* Indictment, *U.S. v. Tokai Kogyo Co. Ltd.*, 1:16-cr-00063 (S.D. Oh. June 15, 2016), ECF No. 1; *see also* EPP Complaint at ¶¶ 111-114 and ADP

[1] *See* EPPs' Class Action Complaint, Case No. 2:16-cv-03403, ECF No. 19 ("EPP Complaint"); ADPs' Class Action Complaint, Case No 2:16-cv-11260, ECF No. 5 ("ADP Complaint"). The EPP Complaint and ADP Complaint are referred together herein as the "Complaints."

Complaint at ¶¶ 100-108. More particularly, the Indictment charged that Defendants GTC and TK Co. entered into and engaged in a combination and conspiracy with co-conspirators "known and unknown to the Grand Jury,"[2] "the substantial terms of which were to allocate sales of, to rig bids for, and to fix, stabilize, and maintain the prices of automotive body sealing products." *See* Indictment, ¶¶10-11.

Plaintiffs filed their Complaints, alleging that the named Defendants, including GTC, engaged in a massive, decade-plus conspiracy to unlawfully fix and artificially raise the prices of automotive Body Sealing products[3] ("Body Sealings"). Despite the fact that: (1) GTC and its corporate parent were indicted by a Grand Jury for participating in an antitrust conspiracy involving Body Sealings; (2) GTC's alleged co-conspirator Nishikawa Rubber Co. Ltd. pleaded guilty to participating in an antitrust conspiracy involving Body Sealings; and (3) the Court has denied a slew of motions to dismiss in related *Auto Parts* cases which raised the same arguments as those raised in GTC's Motion, GTC has moved to dismiss Plaintiffs' Complaints in a desperate attempt to avoid its obligation to compensate the victims of its unlawful conduct. For the reasons set forth below, Plaintiffs respectfully request that the Court reject GTC's arguments here, as it has done with respect to essentially identical arguments on multiple prior occasions in other *Auto Parts* cases.[4]

---

[2] On July 20, 2015, the DOJ announced that Defendant Nishikawa Rubber agreed to plead guilty and pay a criminal fine of $130 million for its role in the Body Sealings conspiracy. EPP Complaint at ¶¶ 109-110; ADP Complaint at ¶ 9. On October 8, 2015, the FBI announced that three Nishikawa Rubber executives, had been indicted by a federal grand jury for participating in the same conspiracy to rig bids and fix prices of Body Sealings. EPP Complaint at ¶¶ 103-108; ADP Complaint at ¶¶ 86-99.

[3] Body Sealings, the product at issue in this case, are defined as automotive parts "typically made of rubber and trim the doors, hoods, and compartments of vehicles. Body Sealings keep noise, debris, rainwater and wind from entering the vehicle and control vehicle vibration. In some instances they also serve as a design element. Body Sealings include body-side opening seals, door-side weather-stripping, glass-run channels, trunk lids, and other rubber sealings." *See* EPP Complaint at ¶ 2; ADP Complaint at ¶ 3.

LEGAL STANDARD

Federal Rule of Civil Procedure ("Rule") 12(b)(6) requires the Court to dismiss the Complaints if they fail "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss for failure to state a claim under Rule 12(b)(6), Plaintiffs must show that their Complaints allege facts which, if proven, would entitle them to relief. *First Am. Title Co. v. DeVaugh*, 480 F.3d 438, 443 (6th Cir. 2007). "A complaint must contain either direct or inferential allegations with respect to all material elements necessary to sustain a recovery under some viable legal theory." *Weiner v. Klais & Co.*, 108 F.3d 86, 88 (6th Cir. 1997). When reviewing a motion to dismiss, the Court must construe the complaint in the light most favorable to the plaintiff, accept all factual allegations as true, and determine whether the complaint contains "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

"The court's job is not to scrutinize each allegation in isolation but to assess all the allegations holistically." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 326 (2007). This principle applies with equal force to price-fixing allegations. *Continental Ore Co. v. Union*

---

[4] *See, e.g.*, Opinion and Order (*Wire Harnesses*), Nos. 2:12-cv-00102, 103, ECF Nos. 99, 119 ("WH Op.") (June 6, 2013); Opinion and Order (*Instrument Panel Clusters*), Nos. 2:12-cv-00202, 203, ECF Nos., 82, 86 ("IPC Op.") (July 3, 2014); Opinion and Order (*Fuel Senders*), Nos. 2:12-cv-00302, 303, ECF Nos. 104, 78 ("FS Op.") (July 3, 2014); Opinion and Order (*Heater Control Panels*), Nos. 2:12-cv-00402, 403, ECF No. 130, 93 ("HCP Op.") (July 3, 2014); Opinion and Order (*Bearings*), Nos. 2:12-cv-00502, 503, ECF Nos. 104, 106 ("Bearings Op.") (Sept. 25, 2014); Opinion and Order (*Occupant Safety Systems*), Nos. 2:12-cv-00602, 603, ECF Nos. 75, 87 ("OSS Op.") (Sept. 25, 2014); Opinion and Order (*HID Ballasts*), Nos. 2:13-cv-01702, 1703, ECF No. 118, 97 ("HID Ballasts Op.") (May 1, 2015); Opinion and Order (*Windshield Wiper Systems*), Case No. 2:13-cv-00902, 903, ECF No. 74, 87 ("Windshield Wiper Systems Op.") (Aug. 12, 2015).

Carbide & Carbon Corp., 370 U.S. 690, 699 (1962). Post-*Twombly* antitrust decisions have routinely rejected attempts to compartmentalize factual allegations and to consider them piecemeal. *See In re Rail Freight Fuel Surcharge Antitrust Litig.*, 587 F.Supp.2d 27, 33, n. 4 (D.D.C. 2008); *In re Southeastern Milk Antitrust Litig.*, 555 F.Supp. 2d 934, 943-44 (E.D. Tenn. 2008). The Court has previously set forth the legal standard in earlier motions to dismiss orders in *Auto Parts*. *See, e.g.*, Windshield Wiper Systems Op. at 3-4; OSS Op. at 7.

ARGUMENT

I. The Court Should Deny GTC's Motion Because Plaintiffs Plausibly Allege That They Indirectly Purchased Body Sealings from Defendants.

Despite GTC's arguments to the contrary (Mot. at 2-4), Plaintiffs plausibly allege that they purchased and/or leased new Vehicles[5] containing Body Sealings sold to OEMs that were affected by the conspiracy. Both and ADPs and EPPs make clear that they allege, just as they have in every other complaint, an industry-wide conspiracy affecting all OEMs. This is a fact that has been perfectly well understood by previous defendants, and it is not clear why these Defendants state that they do not understand it. Both EPPs and ADPs have made clear that they seek to represent all automobile dealers and all persons or entities who made purchases of Vehicles containing Body Sealings manufactured or sold by Defendants, their subsidiaries or co-conspirators during the class period. *See e.g.* ADP Compl. ¶¶ 2, 161; EPP Compl. ¶161. Both also allege that "Prices for Body Sealings sold by Defendants and their co-conspirators have been fixed, raised, maintained, and stabilized at artificially high, non-competitive levels throughout the United States" ADP Compl. ¶204(b); EPP Compl. ¶210(b). Further, the Indictments and guilty plea against Defendants and their employees, which list some but not all of the OEMs affected by the conspiracy, including Honda, Subaru and Toyota, and can be taken into account by this Court in deciding this motion, as reliable, public documents worthy of judicial notice.[6] Plaintiffs hereby request judicial notice of them. In addition, EPPs pleaded that Defendants and their co-conspirators sold Body Sealings to OEMs that were the subject of price-fixing and bid-rigging, including, *but not limited to*, Fuji Heavy Industries Ltd. (manufacturer of Subaru Vehicles), Honda Motor Co., Ltd., and Toyota Motor Company,. EPP Complaint at ¶¶ 89-91.[7] In addition, Plaintiffs pleaded that: (1) "OEMs purchase Body Sealings directly from Defendants" or indirectly from Tier 1 Manufacturers that purchase Body Sealings directly from Defendants (EPP Complaint at ¶ 89; ADP Complaint at ¶ 69); (2) "Body Sealings are installed by [OEMs] in Vehicles as part of the automotive manufacturing process" (EPP Complaint at ¶ 88, ADP Complaint at ¶ 68); and (3) that each End-Payor Plaintiff "purchased at least one Body Sealing indirectly from at least one Defendant or its co-conspirator" as a result (EPP Complaint at ¶¶ 24-76). Plaintiffs do not have to identify the specific OEMs affected by the conspiracy in their first complaint in this action. Discovery will reveal the scope of the conspiracy, but such discovery has not yet taken place and it is inappropriate at this stage of proceedings to demand the level of specificity as to affected OEMs that Defendants demand.

---

[5] "Vehicles" are defined as new four-wheeled passenger automobiles, vans, sports utility vehicles, crossovers, or pickup trucks. *See* EPP Complaint at ¶ 2; ADP Complaint at ¶ 2.

---

[6] Public documents, including those available from reliable sources on the Internet, are subject to judicial notice. *See, e.g., United States ex re. Dingle v. BioPort Corp.*, 270 F. Supp.2d 968, 972 (W.D. Mich. 2003). "The court may take judicial notice at any stage of the proceeding." Fed. R. Evid. 201(d).

[7] GTC blatantly misrepresents the allegations in the EPP Complaint, claiming that "EPPs allege only that three Japanese OEMs, Honda, Toyota and Subaru, were targets of the alleged conspiracy." Mot. at 2. To support its claim, GTC cites only to the paragraphs of the EPP Complaint that explain the scope of the DOJ's Body Sealings investigation, ignoring the additional factual allegations made by Plaintiffs. As explained below, Plaintiffs' claims are not limited by the DOJ's decision to prosecute a more narrowly defined conspiracy. *See In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 664-65 (7th Cir. 2002). Moreover, Paragraphs 89-91 of the EPP Complaint make it clear that EPPs do not limit the scope of Defendants' Body Sealings conspiracy to only three OEMs.

The ADP Complaint also alleges that "[t]he Defendants' conspiracy and wrongdoing described herein adversely affected automobile dealers in the United States who purchased Vehicles which included one or more Body Sealings" ADP Complaint at ¶ 20. The EPP Complaint similarly alleges that "[t]he Defendants' conspiracy and wrongdoing described herein adversely affected persons in the United States who purchased or leased a new Vehicle in the United States not for resale which included one or more Body Sealings." EPP Complaint at ¶ 23. Both Complaints further allege that "[a]s a result of the Defendants' unlawful conduct, Plaintiffs and other similarly situated indirect purchasers in the Nationwide Class who purchased Body Sealings have been harmed by being forced to pay inflated, supra-competitive prices for Body Sealings" (EPP Complaint at ¶ 208; ADP Complaint at ¶ 202); "Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Body Sealings" (*see*, *e.g.*, EPP Complaint at ¶ 220(a)(4)[8]; ADP Complaint at ¶ 214(a)(4)[9]); and "Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Body Sealings and Vehicles containing Body Sealings." (ADP Complaint at ¶ 216(a)(4)[10]). Consistent with the Court's prior rulings denying virtually identical motions to dismiss, such allegations have already been held to be more than sufficient to withstand GTC's Motion.

---

[8] The EPP Complaint includes a specific allegation that Plaintiffs in each Indirect Purchaser State paid supra-competitive prices for Body Sealings. *See* EPP Complaint at ¶¶ 220(a)(4); 221(e); 222(a)(4); 223(a)(4); 224(a)(4); 225(a)(4); 226(a)(4); 227(a)(4); 228(a)(4); 229(a)(4); 230(a)(4); 231(a)(4); 232(a)(4); 233(a)(4); 234(a)(4); 235(a)(4); 236(a)(4); 237(a)(4); 238(a)(4); 239(a)(4); 240(a)(4); 241(a)(4); and 242(a)(4).

[9] *See also* ADP Complaint at ¶¶ 215(e) and 217(a)(4).

[10] The ADP Complaint includes specific allegations that Plaintiffs in Indirect Purchaser States paid supra-competitive prices for Body Sealings (*see* fn. 9, *supra*) or for "Body Sealings and Vehicles containing Body Sealings." *See* ADP Complaint at ¶¶ 218(a)(4); 219(a)(4); 220(a)(4); 222(a)(4);223(a)(4); 224(a)(4); 225(a)(4); 226(a)(4); 227(a)(4); 228(a)(4); 229(a)(4); 230(a)(4); 231(a)(4); 232(a)(4); 233(a)(4); 234(a)(4); 235(a)(4); and 236(a)(4).

GTC suggests that Plaintiffs are required to plead that they purchased and/or leased new Vehicles manufactured by specific OEMs that had purchased Body Sealings from Defendants. Mot. at 2-3. In support of this argument, GTC attempts to introduce information from "consolidated discovery" that "many EPPs already confirmed they did not purchase vehicles manufactured by OEMs to whom Defendants sold Body Sealings" (emphasis removed). Mot. at n. 1. This argument should not be credited because it improperly seeks to argue matters outside the pleadings and apply a summary judgment standard on a motion to dismiss .[11] *In re Packaged Ice Antitrust Litig.*, 723 F.Supp.2d 987, 1005 (E.D. Mich. 2010) (citing *In re Flat Panel Antitrust Litig.*, 599 F.Supp.2d 1179, 1184 (N.D.Cal.2009)) ("*Twombly* did not purport to place on a plaintiff . . . a summary judgment standard at the pleading stage").

Not only is GTC's approach inappropriate, it is one which the Court already has previously rejected in *Auto Parts*. Specifically, in *In re HID Ballasts* ("*HID Ballasts*"), defendants made a similar argument in their motion to dismiss, asserting that EPPs should be required to identify in their complaint specific Vehicles they purchased because HID Ballasts are only installed in a small number of Vehicles. HID Ballasts Op. at 5. The Court rejected this argument and denied Defendants' motion to dismiss on this ground, concluding that Defendants "buil[t] their argument on facts outside the pleadings" and sought to apply "a heightened degree of specificity" to Plaintiffs' claims. *Id*. The Court determined that it must "credit the allegations advanced by [Plaintiffs], that they sold and purchased vehicles containing these products." *Id*.

Here, as in *HID Ballasts*, GTC may not, for purposes of a motion to dismiss, rely upon unsworn self-serving statements characterizing discovery. Such arguments reflect an improper

[11] GTC concedes that its argument regarding information purportedly obtained from Plaintiffs during discovery is "not properly considered on a motion to dismiss" (Mot, n. 1).

attempt to heighten the pleading standard and should not be countenanced. GTC's arguments, if at all proper, should be reserved for summary judgment or trial after the parties have had an opportunity to complete fact discovery. The Court should therefore reject GTC's argument as inappropriate and premature and deny the Motion.

GTC also argues that ADP's complaint should be dismissed because ADPs do not allege the brands of Vehicles impacted by the alleged conspiracy Mot. at 3, that ADPs' complaint should be dismissed because some ADPs did not purchase their Vehicles from the OEMs identified in their complaint simply as examples of OEMs and that both Complaints should be dismissed because they fail to identify any of the named Defendants' Body Sealings customers beyond those OEMs identified by the DOJ. *Id*. at 3,4. Like GTC's other arguments, this argument has been raised by defendants in related *Auto Parts* cases and soundly rejected by the Court. For instance, in *In re Heater Control Panels* ("*HCPs*"), Defendants argued that their guilty pleas did not "support the expansive conspiracy alleged" because "the guilty pleas relate to a single OEM." HCP Op. at 10-11. The Court rejected this argument, emphasizing "that the HCP investigation grew out of a broader investigation into the auto parts industry generally"—an investigation involving numerous injured OEMs besides those set forth in the plea agreements entered by the HCP Defendants. *Id*.

The Court has also emphasized that the DOJ has publicly announced the existence of a "broad industry-wide conspiracy in the auto parts market" involving many OEMs. *Id*. at 11 (citing Statement of William J. Baer, Assistant Attorney General, Antitrust Division, and Ronald T. Hosko, Assistant Director Criminal Investigative Division, Federal Bureau of Investigation, before the Subcommittee on Antitrust, Competition Policy and Consumer Rights Committee on the Judiciary, United States Senate Hearing entitled, "Cartel Prosecution: Stopping Price Fixers and Protecting Consumers").

Having taken all relevant facts into account, the Court was unwilling to limit Plaintiffs' case solely to those OEMs who Defendants admitted they targeted. To the contrary, the Court found that "[t]he number of Original Equipment Manufacturers identified as targets in the guilty pleas does not act as a limit on the scope of the conspiracy, particularly before discovery." *Id*. at 13. A substantially similar holding was made by the Court in *In re Fuel Senders*. FS Op. at 10-13.

GTC provides no basis here for the Court to deviate from its prior decisions. Like HCPs, Body Sealings are the subject of the DOJ's overarching investigation into unlawful anticompetitive conduct in the automotive parts industry, which has resulted in the leading automotive parts suppliers pleading guilty to criminal charges of price-fixing and bid-rigging automotive parts sold to virtually every major OEM. ADPs allege that each of the class representatives in the ADP Complaint have purchased Vehicles from at least one OEM identified in a plea agreement, indictment, criminal information or press release subject to the DOJ's or other regulatory agency's investigation into rampant price-fixing and bid-rigging in the automotive parts market. This is more than enough evidence to retain the claims of each Plaintiff. Defendants make much of ADPs' inclusion of the names of three OEMs who are just provided as examples of OEMs, not the OEMs to whom ADPs' claims can be limited and not all of Defendants' customers. *See* Mot. at 3-4. Defendants' argument is a red herring. .

So whether ADPs include in their complaint the names of certain OEMs as examples of OEMs or EPPs include the names of certain OEMs mentioned in plea agreements, neither group of Plaintiffs is limited to claims only concerning those OEMs, given that they have alleged a conspiracy affecting all OEMs, that is supported by this Court's prior decisions, as well as the DOJ's investigation and its statements about that investigation. The Court's prior decisions make clear that limitations to certain OEMs are inappropriate at this early stage. It matters not whether that not all ADPs purchase Vehicles from the OEMs given as examples in their complaint and not all EPPs purchased Vehicles from the OEMs subject to the DOJ's investigation.

The Complaints contain allegations regarding the 46 companies and 64 individuals who have been charged by the DOJ in its ongoing investigation into the price-fixing and bid-rigging of automotive parts.[12] EPP Complaint at ¶ 159; ADP Complaint at ¶ 159. And these criminal charges include GTC. EPP Complaint at ¶¶ 111-114 and 156; ADP Complaint at ¶¶ 100-108. Taken together with the specific allegations regarding the Body Sealings Defendants' conspiracy, the Complaints meet the requirement of Rule 8, and provide GTC with "fair notice of what the . . . claim is and the grounds upon which it rests." *See Twombly*, 550 U.S. at 555 (citation omitted); *see also Erickson v. Pardus*, 551 U.S. 89, 93 (2007).

Further, while GTC is correct that Plaintiffs have provided Defendants with discovery, Defendants have not provided any discovery to Plaintiffs. Discovery in this case is reasonably expected to reveal that the conspiracy in which the named Defendants participated was significantly broader and had significantly broader effects than what was disclosed in the DOJ indictments and set forth in the Plea Agreement that the Nishikawa Defendants negotiated. Those criminal pleadings are subject to the higher, criminal standards than the civil allegations made in Plaintiffs' Complaints. Discovery is likely to provide further support for Plaintiffs' assertion of an industry-wide Body Sealings conspiracy affecting all major OEMs.

[12] Since Plaintiffs filed their Complaints, the DOJ has obtained additional guilty pleas. *See supra*, at 1 for the current number.

Courts, including this one[13], have consistently held that civil antitrust suits cannot "be circumscribed or defined by the boundaries of the criminal investigations or plea agreements." *Packaged Ice*, 723 F.Supp. 2d. at 1011; *see also In re High Fructose Corn Syrup Antitrust Litig*., 295 F.3d 651, 664-65 (7th Cir. 2002) (setting forth reasons why the DOJ may decide to limit criminal charges); *In re Polypropylene Carpet Antitrust Litig*., 178 F.R.D. 603, 619-20 (N.D. Ga. 1997) (finding that "no authority . . . requires a civil antitrust plaintiff to plead only the facts of a prior criminal indictment. To the contrary, several cases flatly reject this theory"); *In re Vitamins Antitrust Litig*., No. 99-197, 2000 U.S. Dist. LEXIS 7397, at *53-4 (D.D.C. May 9, 2000) (rejecting "the notion that the guilty pleas and cooperation agreements and the class settlements foreclose a broader conspiracy. Guilty pleas are negotiated instruments which take into account not only the culpability of the accused but the Justice Department's resources and other cases requiring the government's attention."). Further, the DOJ makes pleading decisions based on its burden of proof in criminal cases, which is higher than the probability standard for civil cases like these.

Thus, the fact that that some Plaintiffs may have purchased Vehicles from OEMs not mentioned in the DOJ's Body Sealings indictments does not mean that Plaintiffs should be denied discovery and that their claims should be summarily dismissed, especially when there are so many factors supporting the conclusion that the conspiracy is likely significantly broader than what is set forth in the DOJ criminal pleadings. Plaintiffs plausibly allege a broad, industry-wide conspiracy and, accordingly should be permitted to take discovery to investigate this conspiracy.

---

[13] *See, e.g*., Redacted Opinion and Order Denying Keihin North America's Motion to Dismiss at 7-8 (*Fuel Injection Systems*), No. 2:13-cv-02202, 2203, ECF No. 120, 135 (Sept. 8, 2015); *see also* Redacted Opinion and Order Denying Mikuni Motion to Dismiss at 16 (*Fuel Injection Systems*), Case 2:13-cv-02200, ECF No. 117 (Jan. 19, 2016).

For this same reason, Defendants' argument that Plaintiffs do not have standing because they do not allege that they made purchases affected by the conspiracy, Mot. at 5, which argument is based on the limitation of the guilty plea, cannot stand.

II. The Court Should Also Deny Defendants' Motion Because Plaintiffs Have Constitutional Standing to Bring Antitrust Claims Against Defendants.

To meet the constitutional requirement for standing, a plaintiff must first allege that he or she has suffered an injury that is (a) concrete and particularized and (b) actual or imminent rather than conjectural or hypothetical. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Second, the alleged injury must be fairly traceable to defendant's conduct and not the result of the independent action of a third-party. *Id.* Third, the plaintiff must allege that a favorable federal court decision is likely to redress the alleged injury. *Id.* at 561. As indirect purchasers, Plaintiffs' Complaints must include two allegations to satisfy constitutional standing: (1) that Defendants overcharged the direct purchasers; and (2) that some or all of the overcharge was passed on to them through each of the various intermediate levels of the distribution chain. *See In re Graphics Processing Units Antitrust Litig.*, 253 F.R.D. 478, 502 (N.D. Cal. 2008).

Plaintiffs' allegations of injury-in-fact satisfy constitutional standing here as they already have in multiple other *Auto Parts* cases in which the Court denied motions to dismiss raising virtually identical arguments. *See, e.g.*, WH Op. at 13-17; IPC Op. at 12-15; FS Op. at 13-19; HCP Op. at 13-19; OSS Op. at 12-15; HID Ballasts Op. at 3-5. Here, Plaintiffs allege that "Defendants manufacture, market, and sell Body Sealings throughout and into the United States" (EPP Complaint at ¶ 4; ADP Complaint at ¶ 4); "Defendants and other co-conspirators . . . combined and conspired to fix, raise, maintain and/or stabilize prices, and allocate market shares for Body Sealings" (*Id.*); and "[a]s a direct result of the anticompetitive and unlawful conduct alleged [in the Complaints], Plaintiffs and the Classes [] paid artificially inflated prices for Body

Sealings during the Class Period and have thereby suffered antitrust injury to their business or property" (EPP Complaint at ¶ 12; ADP Complaint at ¶ 11). Plaintiffs also allege that Body Sealings are "identifiable, discrete physical products that remain essentially unchanged when incorporated into a Vehicle;" "follow a traceable physical chain of distribution from the Defendants to Plaintiffs and the members of the Classes;" and "any costs attributable to Body Sealings can be traced through the chain of distribution to Plaintiffs and the members of the Classes." EPP Complaint at ¶ 174, ADP Complaint at ¶ 174; *see also* EPP Complaint at ¶¶ 178, 181; ADP Complaint at ¶ 175. Plaintiffs' allegations concerning the physical chain of distribution here are similar to their allegations in numerous other complaints in this litigation, which the Court has refused to dismiss on constitutional standing grounds. Mot. at 5.

Indeed, courts have routinely found that plaintiffs plausibly alleged they have standing to pursue claims for purchases of a finished product containing a price-fixed component. *See*, *e.g.*, *In re Static Random Access Memory* (*SRAM*) *Antitrust Litig.*, 264 F.R.D. 603, 610-11 (N.D. Cal. 2009); *In re TFT-LCD* (*Flat Panel*) *Antitrust Litig.*, No. 07-1827, 2012 U.S. Dist. LEXIS 9449, *33 fn. 2 (N.D. Cal. Jan. 26, 2012). Here, Plaintiffs alleged they were injured because they paid more for their Vehicles than they would have but for Defendants' unlawful conspiracy to fix prices, rig bids, and allocate the market for Body Sealings. This allegation is sufficient to plausibly allege Plaintiffs' standing under Sixth Circuit law.[14] For the reasons set forth below, the cases cited by GTC are distinguishable and offer no support for its argument.

---

[14] *See City of Oakland v. City of Detroit*, 866 F.2d 839, 845 (6th Cir. 1989), (quoting *Chattanooga Foundry & Pipe Works v. City of Atlanta*, 203 U.S. 390, 396 (1906) ("A buyer who is induced to pay an unlawfully inflated price for goods or services obviously suffers an actual injury").

GTC cites *In re Apple iPhone Antitrust Litig.*, No. 11-cv-06714, 2013 WL 4425720 (Aug. 15, 2013 N.D. Cal.) ("*iPhone*") in support of its argument that Plaintiffs lack standing, but that case is not on point. In *iPhone*, plaintiffs alleged, *inter alia*, that Apple unlawfully monopolized the aftermarket for iPhone applications.[15] *Id.* The court dismissed this claim on the ground that plaintiffs lacked constitutional standing because none of the plaintiffs alleged that he or she "ever purchased an Application or was overcharged; that any overcharge was the result of allegedly wrongful conduct; nor that named Plaintiffs suffered any injury therefrom." *Id.* at *6.

Unlike the plaintiffs in *iPhone* complaint, each and every Plaintiff here has alleged: (1) that it purchased or leased Vehicles containing the price-fixed product – Body Sealings; (2) that the overcharge for Body Sealings was borne by Plaintiffs; (3) that the overcharge was the result of the Defendants' price fixing conspiracy; and (4) that it was injured as a result. Accordingly, *iPhone* does not dismissal here.

GTC also cites *In re Magnesium Oxide Antitrust Litigation*, where the court found the indirect purchaser plaintiffs "fail[ed] to specify which MgO products—*i.e.* products containing DBM or CCM—they purchased." No. 10-5943, 2011 U.S. Dist. LEXIS 121373 at *22 (D.N.J. Oct. 20, 2011).[16] DBM and CCM were the products in question and the two most common forms of the mineral magnesium oxide: dead-burned magnesia and caustic-calcined magnesia, respectively. *Id.* at *5. The court noted that "DBM and CCM are produced differently and have different commercial applications" and that Magnesium Oxide is "used in producing a wide variety of products, including refractory products, animal feeds, fertilizers, electrical insulation, and pharmaceuticals." *Id*. at *4-5. With this as backdrop, the Court granted the motion to dismiss.

---

[15] Applications are the software programs that iPhone owners purchase and/or download directly from Apple onto their iPhones.

[16] The court stated, "[W]ithout knowing which specific products IP Plaintiffs purchased, it is impossible to determine whether an increase in their price is the type of injury that furthers the object of the alleged conspiracy to fix prices in and allocate shares of the domestic DBM and CCM markets." *Id.* at *22

The same issue is not present here. Unlike in *Magnesium Oxide*, there is not a wide diversity of products with different applications incorporating the price-fixed product. The facts here are different because the "application" (Vehicles) and the price-fixed product (Body Sealings) which they incorporate are "inextricably linked and intertwined … because the market for Body Sealings exists to serve the Vehicle market. Without the Vehicles, the Body Sealings have little to no value because they have no independent utility. Indeed, the demand for Vehicles creates the demand for Body Sealings." *See* EPP Complaint at ¶ 173; ADP Complaint at ¶ 173. In addition—and more importantly—Plaintiffs identified the product that they purchased — "Vehicles containing Body Sealings," which are used to "keep noise, debris, and rainwater from entering a Vehicle and control Vehicle vibration" and can be physically traced through the chain of distribution. *See, e.g.*, EPP Complaint at ¶¶ 2, 23 and 175; *see also* ADP Complaint at ¶¶ 3, 20 and 175. That each Plaintiff may not have pleaded which Vehicle he or she purchases from which auto dealer or which conspirator made the Body Sealings it purchased is of no moment to the present inquiry regarding standing. Similarly, whether all ADPs purchased their Vehicles from the three OEMs identified in their complaint merely as examples of OEMs is not dispositive to standing. This one example does not limit ADPs' claims to these OEMs. The scope of the conspiracy and claims must await the completion of discovery. Indeed, as this Court noted previously in the *OSS* Opinion, "[e]ven in the absence of allegations as to what particular parts were purchased from whom, the allegations in the complaints satisfy IPPs' pleading burden." OSS Op. at 13-14.

Contrary to Defendants' erroneous argument that Plaintiffs do not allege who purchased affected Vehicles, Mot at 5, Plaintiffs allege that each one of them purchased Vehicles that were affected by the conspiracy.

To the extent that Defendants seek to introduce discovery responses herein to assert that Plaintiffs have not purchased Vehicles containing Defendants' Body Sealings, such efforts to introduce factual materials outside the pleadings must, as noted above, be rejected. As stated in Plaintiffs' oppositions to the multiple motions to dismiss in other cases in *Auto Parts*, and as this Court has repeatedly found in its previous decisions on these motions to dismiss, Plaintiffs have sufficiently alleged a causal connection between their injury and Defendants' unlawful conduct, thereby satisfying their pleading burden for constitutional standing. *See*, *e.g.*, WH Op. at 46; Bearings Op. at 15; OSS Op. at 14. Accordingly, Plaintiffs respectfully submit that Defendants have presented no grounds here for reaching a different conclusion on constitutional standing.

As in the present case, the defendants in *In re Optical Disk Drive Antitrust Litigation* ("*ODD*") also argued that because plaintiffs set forth instances of rigged bids as to an identified subset of OEMs, plaintiffs who purchased the price-fixed product from other OEMs did not have standing. The *ODD* court rejected this argument. *In re Optical Disk Drive Antitrust Litig.*, No. 10-md-2143, 2012 U.S. Dist. LEXIS 55300, *35-36 n.13 (N.D. Cal. Apr. 19, 2012) ("while detailed 'defendant by defendant' allegations are not required, a complaint 'must allege that each individual defendant joined the conspiracy and played some role in it because, at the heart of an antitrust conspiracy is an agreement and a conscious decision by each defendant to join it") (citation omitted). This Court should similarly hold in this case.

Plaintiffs are not required to identify in their Complaints the Defendants that manufactured or sold the Body Sealings contained in the Vehicles Plaintiffs purchased or leased.

Because Defendants are jointly and severally liable for the conduct of their co-conspirators, Plaintiffs' injury is not limited to Vehicles containing Body Sealings manufactured or sold by Defendants. The Complaints allege that the conspiracy goes beyond the two corporate families identified as conspirators in the DOJ's criminal pleadings and includes as-yet unnamed co-conspirators. *See* EPP Complaint at ¶¶ 83-85; ADP Complaint at ¶¶ 64-66. Moreover, the Complaints allege the likely existence of an ACPERA applicant. *See*, *e.g*., ADP Complaint at ¶¶ 109-110; EPP Complaint at ¶¶ 115-116. In light of this important fact, discovery, which has not yet commenced, will most certainly reveal the existence of additional co-conspirators and affected Vehicles.

Finally, even if, prior to the taking of any discovery, the Court were to limit its focus to the OEMs for which GTC and the other named Defendants manufacture and sell Body Sealings, the website of TK Co. (GTC's parent) indicates that it sells products to many OEMs in addition to those identified in the DOJ indictment. *See, e.g., About Tokai Kogyo*, http://www.tokaikogyo.co.jp/EN/Kaisya/Gaikyo.html (list of TK Co. OEM customers includes Daihatsu Motor Co., Ltd., Hino Motors, Ltd., Honda, Isuzu, Mazda, Nissan, Suzuki, and Toyota) (last visited December 13, 2016). Thus, it is more than likely that the Body Sealings conspiracy affected OEMs in addition to those referenced in the DOJ's criminal pleadings.

CONCLUSION

For all of the foregoing reasons, the Court should deny Defendant GTC's Motion to Dismiss End-Payor Plaintiffs' and Auto Dealer Plaintiffs' Class Action Complaints.

Date: December 13, 2016

Respectfully submitted,

/s/ Hollis Salzman
Hollis Salzman
Bernard Persky
William V. Reiss
ROBINS KAPLAN LLP
601 Lexington Avenue, Suite 3400
New York, NY 10022
Telephone: (212) 980-7400
Facsimile: (212) 980-7499
HSalzman@RobinsKaplan.com
BPersky@RobinsKaplan.com
WReiss@RobinsKaplan.com

Steven N. Williams
Elizabeth Tran
Demetrius X. Lambrinos
COTCHETT, PITRE & McCARTHY, LLP
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577
swilliams@cpmlegal.com
etran@cpmlegal.com
dlambrinos@cpmlegal.com

Marc M. Seltzer
Steven G. Sklaver
SUSMAN GODFREY L.L.P.
1901 Avenue of the Stars, Suite 950
Los Angeles, CA 90067-6029
Telephone: (310) 789-3100
Facsimile: (310) 789-3150
mseltzer@susmangodfrey.com
ssklaver@susmangodfrey.com

Terrell W. Oxford
Chanler Langham
Omar Ochoa
SUSMAN GODFREY L.L.P.
1000 Louisiana Street, Suite 5100
Houston, TX 77002
Telephone: (713) 651-9366
Facsimile: (713) 654-6666
toxford@susmangodfrey.com
clangham@susmangodfrey.com
oochoa@susmangodfrey.com

Interim Co-Lead Class Counsel for the Proposed End-Payor Plaintiff Class

/s/ E. Powell Miller
E. Powell Miller
Devon P. Allard
THE MILLER LAW FIRM, P.C.
The Miller Law Firm, P.C.
950 W. University Dr., Ste. 300
Rochester, Michigan 48307
Telephone: (248) 841-2200
Facsimile: (248) 652-2852
epm@millerlawpc.com
dpa@millerlawpc.com

Interim Liaison Counsel for the Proposed End-Payor Plaintiff Classes

/s/ Jonathan W. Cuneo
Jonathan W. Cuneo
Joel Davidow
Daniel Cohen
Victoria Romanenko
Evelyn Li
Blaine Finely
CUNEO GILBERT & LADUCA, LLP
507 C Street, N.E.
Washington, DC 20002
Telephone: (202) 789-3960
jonc@cuneolaw.com
joel@cuneolaw.com
danielc@cuneolaw.com
vicky@cuneolaw.com
evelyn@cuneolaw.com
bfinley@cuneolaw.com

Don Barrett
David McMullan
BARRETT LAW GROUP, P.A.
P.O. Box 927
404 Court Square
Lexington, MS 39095
Telephone: (662) 834-2488
Facsimile: (662)834-2628
dbarrett@barrettlawgroup.com
dmcmullan@barrettlawgroup.com

Shawn M. Raiter
LARSON · KING, LLP
2800 Wells Fargo Place
30 East Seventh Street
St. Paul, MN 55101
Telephone: (651) 312-6500
Facsimile: (651) 312-6618
sraiter@larsonking.com

Interim Co-Lead Class Counsel for Dealership Plaintiffs

Gerard V. Mantese
(Michigan Bar No. P34424)
MANTESE HONIGMAN AND WILLIAMSON, P.C.
1361 E. Big Beaver Road
Troy, Michigan 48083
Telephone: (248) 607-9200
gmantese@manteselaw.com

Interim Liaison Counsel for Dealership Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2016 I caused the foregoing END-PAYOR AND AUTO DEALER PLAINTIFFS' OPPOSITION TO DEFENDANT GREEN TOKAI CO., LTD's MOTION TO DISMISS END-PAYOR PLAINTIFFS' AND AUTO-DEALER PLAINTIFFS' CLASS ACTION COMPLAINTS to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ E. Powell Miller
E. Powell Miller
THE MILLER LAW FIRM, P.C.
The Miller Law Firm, P.C.
950 W. University Dr., Ste. 300
Rochester, Michigan 48307
Telephone: (248) 841-2200
Facsimile: (248) 652-2852
epm@millerlawpc.com